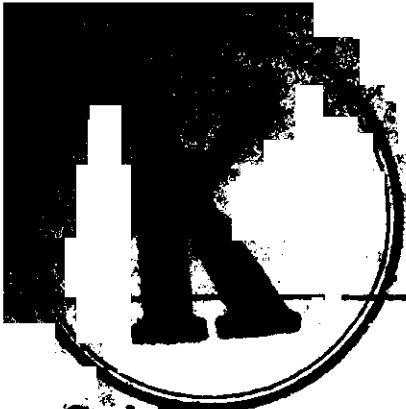




File No. *Ct. A. Kan. /42*

Legal DEPARTMENT

A BRANCH

Subject:—

*Communal Appeals in the High
Court against the acquittal—
Kanara District*

*P. 18
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166-A

CONTENTS

Legal Department File No. C. A. Kan/42

Sr. No.	Compilation No.	Subject	Pages
		<u>Criminal Appeals</u>	
1	Cr. App. No. 347 of 1941 dt. 8-1-42	Imp. Vs. Pitti Tammi shiddi	1-28
2	Cr. Ref. No. 81 of 1942 dt. 13-11-42	Imp. Vs. Mohammad Gowd Umarsala	29-34

21.

Judgment recorded by the High Court in Criminal Appeal No. 347 of 1941 (By the Government of the Province of Bombay) in the case of Emperor Vs. Patti Tammu Shiddi, No. 1.

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Mr. R. A. Jahagirdar, Government Pleader for the
Government of the Province of Bombay.

Mr. K. R. Bengeri, Advocate (appointed for the accused.)

8th January 1942.

(Coram : Beaumont, C.J. and N.J. Wadia, J.)

Oral Judgment (Per Beaumont, C.J.) :- This is an appeal by the Government of Bombay against the acquittal of the accused on a charge of murder. He was tried by the Sessions Judge of Kanara. All the assessors considered that he was guilty, but the learned Judge acquitted him. The learned Judge's judgment seems to me, if I may say so, not a very logical one. He admits more than once that the accused must have ~~taken~~ part in the murder of the deceased. If so, he must be guilty either as a principal or as an accessory. The learned Judge points out that there is a great deal of circumstantial evidence connecting the accused with the murder, but he thinks that that evidence by itself is not quite enough to justify a conviction. There is also a confession by the accused, but the learned Judge considers that he does not tell the whole truth. He says he is not satisfied that there was not more than one person concerned in this murder, and, as the confession admits that the murder was committed by the accused alone, the learned Judge considers that the confession is not true. But the confession may be true as to the matters which it states, although it omits to

state something else which was relevant. The Court is not **justified** in ignoring the whole of the confession because it omits some matter which it would have been relevant to state.

However, the main question, I think, turns on the circumstantial evidence. The accused is of a low - - intellectual type, and he had been for some time in Police custody before he made his confession, and undoubtedly he is a type of man who would be easily influenced by Police pressure, and if I had nothing except his confession to go upon I should hesitate to act upon it. But the confession seems to me to be valuable mainly as corroborating the circumstantial evidence and showing that the natural inference one would draw from the circumstantial evidence viz. that the accused is guilty, is in fact the right inference.

The facts are these. The murdered man is one Krishna who lived in the village of Heggur, and on the 3rd of July 1940 he had left his village in order to get married, and according to the evidence of his relatives he got married to a woman whom he left with his friends in Kumta, and then he returned to Heggur. Some time towards the end of July, and some days before the date of this offence, which was the 2nd of August he left the village to go to a place called Mirjan to bring some coolies for his work. Mirjan is not far from Kumta, but there is no evidence that Krishna visited his wife on that occasion, but he returned to Heggur with two coolies. On the second of August he left his village again in order to go and fetch his wife from Kumta. He had with him a certain amount of money and some ornaments which are mentioned in the

first information. The evidence as to his movements on that day is that he first of all went up to his field, and there yoked the bullocks of accused No.1 who was his tenant, and of Hosbanna Ex.10 who was one of the coolies fetched from Mirjan some days before. Hosbanna says that after Krishna had yoked the bullocks he went in the direction of his house, and that after ploughing the field for half an hour the accused unyoked his bullocks and went towards his own house and did not return to work that day, although normally they continued ploughing till 11 a.m. and also ploughed in the afternoon till evening. After that at about 9 or 10 a.m. Krishna passed the fields again on his way to the ferry at Ramanguli. Then he visited accused No.2's field and took from him a certain number of Victoria rupees in order that they might be changed by Krishna at the Treasury for coins which are current.

He is next mentioned by witness Fakira Ex.30. He is an uncle of the accused, and is the tenant of certain lands at Konal through which the path to the Ramanguli ferry passes, and on the 2nd of August, which is identified by all the witnesses as the day before the Kode Amashya or New Moon day, he saw the deceased going to Ramanguli Ferry i.e. at the spot marked 9 on the map which is on the record. The time was about three hours after sunrise. That is the last occasion on which Krishna was seen alive.

Subsequently a letter was received by his relatives at Heggar from the person at Kumta with whom Krishna's wife had been left inquiring why he had not removed his wife and two persons were sent at different times to Kumta both of whom reported that Krishna had not arrived there. - - Accordingly Narayan Timmayya, an uncle of Krishna who was living with him, on 24th August gave information of the disappearance to the Police and in his statement he mentioned the clothes which Krishna was wearing and described him as aged 30, height 5 feet 4 inches and also mentioned

the ornaments which he had got with him, some of which he was taking to give to his wife. No doubt the first - - information suggests that on the day of his disappearance, Krishna had spoken to two witnesses beyond the river at Ramanguli and it is the prosecution case that he was killed before he reached the river. But the evidence of the two witnesses makes it clear that they ^{had} seen Krishna only on the previous occasion when he was going to Mirjan, and the complainant was making a mistake about this.

Two days after that the accused asked Subbi, an aunt of Krishna, how the search for Krishna was going on. She said that nothing had been discovered. He told her that nothing would be discovered because Krishna was dead. That statement, when reported to the Police, naturally brought suspicion on to the accused, and on the 28th of August he made a statement before the Magistrate under Section 164 of the Criminal Procedure Code. The Statement made by a potential witness under that section is not normally substant^{-ve} evidence, but the position is rather curious here because subsequently, after the accused had been charged, he made another statement before the Magistrate which is relied on as a confession. But I think that if ~~we~~ we look at the later statement which incriminates the accused we are bound to look at the earlier statement which is much less incriminating and accordingly we have looked at that statement. It suggests that the murder¹ was committed by two named persons who have not been charged, and that the accused was present though taking no part in the murder. But it is quite apparent I think that that statement is untrue, particularly in relation to the alleged disposal of the body by throwing in a ^{stream.} ~~stream~~. The Police investigated on the lines of that - - statement and got no useful evidence in support of it, and

on the 29th of August the accused disappeared. He returned to Hegggar on the 16th of September, and on that very day took the Police Patel of Hegggar and certain panchas to a spot in the jungle, which according to the Panchnama was about 40 cubits away from the path leading from Hegggar to Ramanguli ferry and he there pointed out human bones. There were also found near the human bones articles 1 to 20 which are before the Court. They ~~were~~ are various clothes and certain gold ornaments, particularly three gold rings, and they are all identified as having belonged to Krishna. The Police Patel of Hegggar sent word to the Police Sub-Inspector about this discovery and in the meantime he and his party remained on guard over the bones. The police Sub-Inspector arrived on the 18th September. After the arrival of the Police Sub-Inspector, and after the making of the Panchnama, the accused offered to point out, and did point out, certain silver ornaments which are articles 22 to 26 which were in a cigarette tin below a fallen tree near the village of Hegggar. These also are identified as having been on Krishna's person when he disappeared. After that the accused again absconded, and was not discovered till the 2nd of October when he was arrested. After his arrest viz. on the 9th of October he produced a silver girdle, another of the ornaments identified as having been on Krishna's when he disappeared, from a place not far from the accused's house. In the result all the ornaments, or ~~practically~~ practically all the ornaments, alleged to have been in the possession of Krishna at the time when he started off on his journey, were recovered either lying loose near where the bones were found or in these two places of concealment pointed out by the accused. It is rather curious that some of these articles were left by the body and not taken by the murderer. It is possible that the accused did not realise that they were of gold but thought that they were brass

and of no value.

Apart from ~~that~~ evidence of production of property which had belonged to Krishna, there is evidence that on the day of the offence i.e. the day before the New Moon day, the accused went to Ramanguli and he there purchased certain articles for a sum of Rs.3-8-0 which he purchased from the witness Narayan Shetti, Ex.34, and he tendered for these articles four Victoria rupees which the witness refused to accept, and subsequently the accused tendered current coins. According to the evidence of the accused's brother the accused was not at his house during this day; he did not come back for the midday meal, and when he came on that evening, he brought these articles which he had purchased and said that he had got them by means of Rs.5 credit to which he was entitled at the shop of Timmappa at Ramanguli. So that if that evidence be accepted, and I see no reason why it should not be accepted, it shows that on the day of the disappearance of Krishna the accused was in funds of Rs.3-8-0 which is probably a large sum for him. He was also in possession of Victoria rupees, which Krishna was carrying, and he gave a false reason to his brother in connection with the purchase of these articles.

The bones which were discovered were sent to a Professor of Anatomy who stated that they were part of the skeleton of a male, the age and height corresponding with the details given as to Krishna. But the witness was unable to give the cause of death because ~~including the skull~~ injuries had been occasioned to some of the bones including the skull. He could not say whether they were ante-mortem or post-mortem or whether they had been caused by wild animals or otherwise. So that all one can say is that the bones ~~if~~ may well have been the bones of Krishna because they were the bones of a man of ^{about} his age and size. But the real evidence of identification consists in the clothes and ornaments found with the bones and a

note-book of Krishna which was also found with the clothes, and I think there is not the slightest doubt that the bones were the bones of Krishna and the learned Judge accepted that view of the matter.

The only motive suggested by the prosecution is that the accused had shortly before Krishna's disappearance sold the cross poles of a plough for a sum of four annas. The plough belonged to Krishna, and Krishna was complaining ~~about~~ about this. That would not seem to be a substantial motive for a normal person, but, as I have already observed, the accused is of a low type and this incident may have induced the accused in the first instance to feel some hostility for Krishna. But I think that the object of the murder was ~~xxxxxx~~ undoubtedly robbery.

In my opinion the circumstantial evidence is sufficient to convict the accused. We have got the fact that Krishna was never seen after he passed the field of Fakira on his way to Ramanguli ferry. After he disappeared the accused pointed out in the jungle at a point about 40 cubits removed from the path to Ramanguli beyond Fakira's land the bones of a male of about the age and height of Krishna with clothes and ornaments identified as Krishna's close by. The accused also pointed out from hiding places ornaments which had been worn by Krishna when he disappeared. The accused was not present at work or in his house on the day on which Krishna disappeared, and he left his field shortly before Krishna started. It is difficult to see what explanation can fit in with those facts except that the accused committed the murder. Of course it is possible that somebody else committed the murder, ~~xxxxxxxxxxxxxxxx~~ or that Krishna was killed by a wild beast, and the accused subsequently discovered his body. But that is not the story he sets up. On the contrary the story which he told in his confession is that he did waylay Krishna, and beat him to death with a stick, and then removed these ornaments and concealed them

in the places from where they were produced, and before the Committing Magistrate he did not deny the production of these articles or offer any explanation as to how he came to know where they were. In the Sessions Court he told the usual sort of story that the Police pointed out to him the places where these things were, where the body was lying and where the ornaments were concealed and that he ^{was} told by the villagers to point out these places. But that is really an absurd story.

The learned Judge, as I have said, rejected the confession because he was inclined to think that there were at least two persons who committed the murder. In fact two persons were tried, but accused No.2 was acquitted and again ^{-st} that acquittal Government has not appealed and indeed there was practically no evidence against accused No.2 except one witness, Ex.58, who says that on the day in question as he was going along the path to Ramanguli he saw accused No.1 and accused No.2 in the jungle near where the body was found carrying a dead body. The learned Judge did not accept that evidence as against accused No.2, but he seems to have accepted it in favour of accused No.1 as suggesting that there were two persons who committed the murder. In point of fact if one accepts the evidence of that witness it certainly does not help the present accused. It shows that he was carrying the dead body on that day, and the mere fact that some body else may have helped him does not assist him. The accused himself in some of his statements, and particularly in questions asked by him of accused No.2 as a witness before the Magistrate suggested that he was really acting on behalf of accused No.2 who was a Brahmin. The present ~~xxxxxx~~ accused is undoubtedly the type of man who might be expected to fill the roll of a hired assassin. But I do not myself think that there is any reason for supposing that that was the roll he filled. The motive for the murder seems to have been robbery of ornaments of no great value. Accused No.2

is a man who had already been convicted of murder, and had been 13 years in prison. I should doubt very much whether he would have been disposed to run the risk of another conviction for ornaments of comparatively trifling value. The ornaments would have been more likely to attract a man of the type of the present accused than a man of higher education and a better position in life, and the fact that the accused produced or pointed out practically all the ornaments known to have been on the person of Krishna is very strongly against the view that there was somebody else connected with the murder. If the accused was merely a hired assassin it is extremely improbable that he would have been allowed to get away with the loot. This was a murder of a very common type involving no planning or skill of any sort. It is not the type of murder which a man of ^{the} nature of the accused would be incapable of perpetrating. It required really no sort of preparation and no weapon except a stick. In my opinion the evidence is amply sufficient to justify the conviction of the accused. His confession I think is voluntary, there is no evidence to the contrary, and therefore is admissible in evidence, but I rather rely more on the confession to corroborate the circumstantial evidence, than upon the circumstantial evidence to corroborate the confession.

The appeal of Government must be allowed and we convict the accused under Section 302.

The murder was deliberate one committed with the motive of robbery and the sentence ~~of death~~ is ~~xxxx~~ the only proper sentence. We therefore sentence the accused to be hanged by ^{the} neck till he is dead.

per Wadia, J.:- The evidence shows satisfactorily that the bones which were found were those of Krishna Vaidya. The ornaments found with the bones were of the same description as some of those which were mentioned in the first information given by the murdered man's uncle Narayan on the ----

24th August. That information stated that Krishna was wearing at the time among other things a ~~blue~~ coat and a white Khadi cap, and articles answering this description were also found along with the bones. A note book was also found containing some writing which has been identified by Krishna's cousin Ramchandra as being Krishna's. The --
ornaments found with the bones and those which were produced by the accused from two different places were identified by Krishna's aunt Subbi and by his cousin Ramchandra. Krishna had been described in the first information as a man about 30 years of age and about 5 feet 4 inches in height and the medical evidence shows that the bones found were those of a male human being between 25 and 40 years of age and about 5 ft. 4 inches to 5 ft. 5 inches in height. There can therefore be no doubt that the bones and the ornaments were those of the murdered man.

The evidence of the deceased's uncle Narayan and the Police Patil and of the two police Sub-inspectors who investigated the case shows that on the 16th September 1940 accused showed to the Police Patil and some others the place in the jungle where the bones and ornaments of the murdered man were found. On the 18th September also he produced from another place in the jungle, not far from his own hut and concealed under a tree, ~~xx~~ a cigarette tin containing three other ornaments and 8 Victoria rupees. These ornaments have also been identified by Krishna's relatives as his. Some days later, on the 9th October 1940 he again produced from a tree not far from his hut a silver girdle, article 32, which has also been identified as one which the murdered man had on his person when he left his house on the 2nd August. There is evidence to show that on the day on which the murder was committed, the 2nd August, at about 3 p.m. accused visited the shop of Narayan Shetti at Ramanguli and had made certain purchases and tried to pay for them by giving four Victoria rupees. When these were refused he paid the amount in current rupees.

The accused was arrested on the 2nd October 1940 and on the 15th October he made a confession before the Magistrate in which he stated that he alone had committed the crime. He subsequently retraced^t the confession and stated that it was made owing to beating by the Police. Before this confession he had been sent by the police to the Magistrate on the 28th August 1940, four days after the first information had been given to the police, to have his statement recorded as a witness under Section 164. This was because after the first information was given to the Police the accused is alleged to have made some remark to the deceased's aunt Subbi that the deceased was dead and would never return and it was no use searching for him. This aroused suspicion and the accused was questioned by the Police. In the statement which he made on the 28th August he gave a story entirely different from that which he subsequently gave in his confession. He then said that the murder had been committed by three other persons, one of them being Subbanna Vaidya a relative of the murdered man who had been put up for trial along with the accused but was acquitted, and two others. According to this statement he himself only took a very subordinate part in the offence and merely took Krishna to the place where the three others had told him to bring him. In that statement he also said that the murder had been committed at an entirely different place and the body had been disposed of in a different manner namely by being thrown into the river. The police made investigation on this statement but it led to nothing. The body was not found nor was anything incriminating found with the three persons who were mentioned in the statement. Nothing was found with the accused. Thereafter the accused absconded. After he was found on the 16th September he gave information which led to the finding of the bones and the ornaments and he produced two sets of ornaments articles 23 to 26

45-23

and 32.

There are undoubtedly certain difficulties about accepting the confession. There is first the earlier and entirely different statement made by him on the 28th August in which he disclaimed having himself taken any active part and stated that others committed the crime. Then there is the question, somewhat difficult to understand, why, if the accused had committed the offence, he left so many ornaments with the body and took only a few and those of lesser value. But these difficulties can, I think, be satisfactorily explained by the fact pointed out by the learned Sessions Judge himself that the accused is a person of a very low degree of intelligence. It is possible that when he was first questioned by the police as a result of the statement which he made to Subbi, he may have tried to get out of the difficulty by giving a false story. When that was found to be false and he was again closely questioned by the Police Patel and by the relatives of the murdered man, he made a second statement and pointed out the bones and the ornaments. The pointing out of these bones and the production of ornaments which are proved to have been on the person of the murdered man on the day of the crime is very strong evidence against the accused. Some of the ornaments which had been concealed by him in two different places were for all practical purposes in his possession, and this evidence is entirely irreconcilable with the accused's innocence. If anybody else had been the murderer it is difficult to understand how the accused could have been in possession of some of the ornaments. If the accused had nothing to do with the crime he could also not have known where the bones and other ornaments were lying. The learned Sessions Judge agrees that this evidence shows that the accused must have been concerned in the crime but he thinks that the accused could not have been the only person concerned, and since according

to his confession he was the only person concerned the learned Judge thinks that the confession is not a true one. In the first place even if somebody else was concerned in the crime and the accused had suppressed this fact in his confession that is no reason why the confession should not be accepted as true so far as the part played by the accused is concerned. But on a consideration of the whole evidence I am of opinion that the confession is entirely true and that the crime must have been committed by the accused alone. If anybody else had been concerned in the crime along with the accused it is difficult to understand why so many ornaments should have been allowed to remain where the body was left. It is in evidence that practically all the ornaments which were on the person of the murdered man when he ~~left~~ left his house have been found. So that if anybody else was concerned in the crime we are asked to believe that he took no share whatever in the property which the murdered man had on his person. This is hardly believable since the crime was ~~committed~~ committed on account of ^{the} ornaments. Nor can one understand why the accused should have felt it necessary to shield that other person whoever he was. It has been suggested that the accused was bribed by the other criminal or criminals to conceal their part in the crime and to take the whole blame on himself. This suggestion is one which it is impossible to accept. The confession therefore appears to me to be true and I am not prepared to accept the story of the accused that it was made because of ill-treatment by the police. The accused had already shown to the police the places where the bones and some of the ornaments of the murdered man were lying and he had also produced the remaining ornaments himself. That evidence was by itself sufficient to prove the guilt of the accused and it was scarcely necessary for the police to use any pressure to induce the accused to confess. The confession and the production of the ornaments and the pointing out of the place where the bones of the

murdered man were lying are in my opinion amply sufficient to prove that the accused committed the murder. I agree therefore that the appeal must be allowed and the accused convicted under Section 302 of the Indian Penal Code and sentenced to death.

By the Court,

Sd/-M.G.Rao

Deputy Registrar.

Judgment recorded by the High Court in Criminal Reference No.81 of 1942 in the case of Emperor Versus Mohammad Gows Umarsab No.1 and another No.2.

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Mr. N.S.Deshpande, Advocate (appointed) for the accused.

Advocate General with Government Pleader for the Crown.

13th November 1942.

(Coram : Beaumont, C. J. and Sen, J.)

Oral Judgment (Per Beaumont, C.J.) :- This is an application made by the District Magistrate of Kanara for enhancement of sentence on two accused. Accused No. 1 according to the evidence, comes from Dharwar, and on the 6th of July ~~1941~~ he purchased some paddy in the Kanara District. Accused No.2 is a coolie employed by accused No.1, but he seems to own a bullock cart which he let out to accused No.1 for the purpose of removing the paddy which he had bought. Both accused were found at 3 a. m. on the morning of the 7th of July ~~1941~~ going towards the Dharwar District close to the border between that district and the Kanara District. The irresistible inference is that they were taking rice, which had been bought in the Kanara District, to Dharwar, and that is the finding of the learned Magistrate. They were, therefore, prosecuted for breach of the District Magistrate's order made under rule 81 (2) (a) of the Defence of India Rules. That order, which came into force on the 1st of May 1942, directs that " no person shall remove any kind or quantity of rice or paddy by road, rail, river or sea from any place within the limits of the Kanara District to any place outside the said district except under a licence granted by the District Magistrate, Kanara." No

doubt, as Mr. Deshpande points out, as they had not reached the border of the Kanara District, they had not at the time of their arrest completed the offence; they had not removed paddy outside the Kanara District. But rule 121 of the Defence of India Rules provides : " Any person who attempts to contravene, or abets, or attempts to abet, or does any act preparatory to, a contravention of, any of the provisions of these Rules shall be deemed to have contravened that provision." It is quite clear that in purchasing paddy in the Kanara District, and loading it in the cart, and taking it along the Dharwar Road up to near the border, the accused had done an act preparatory to the contravention of the rule. It is perfectly plain that they were taking paddy from the Kanara District to the Dharwar District. The learned Magistrate convicted, in my opinion, quite rightly. He imposed a fine of Rs.30/- on accused No.1 and Rs.10/- on accused No.2.

With regard to accused No.2, he is only a coolie, and the Rs.10/- fine is a heavy matter for him. There is no reason for supposing that he was making an additional profit by reason of the use of his cart to contravene the rules. There is no suggestion that he was paid a fancy fee, because he was running the risk of getting into - - trouble. I do not think there is any sufficient reason for enhancing the sentence of him.

In the case of accused No.1 it is apparent that ~~the~~ he was getting this paddy for disposal at Dharwar, and the presumption is that he hoped to make a large profit by purchasing paddy in Karwar and taking it to Dharwar for disposal at a higher ~~rate~~ price than he could get in Karwar. Therefore, he was breaking the rule in order to make a profit, and in such a case it is useless to impose a fine which is [^]probably less than the profit he

is likely to make by such a transaction. Such punishment is not likely to act as a deterrent. These Defence of India Rules must be obeyed, and I think a deliberate breach of this sort ought to be punished with a sentence of imprisonment.

We, therefore, enhance the sentence on accused No.1 by sentencing him to three months rigorous - - imprisonment in addition to the fine.

By the Court,
Sd. M. G. Rao,
Deputy Registrar.

34

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K. J. Melanhan

Superintendent,
D Branch, Legal Department.
